



34 CFR Part 600

DEPARTMENT OF EDUCATION

[Docket ID ED-2018-OPE-0076]

RIN 1840-AD38

Distance Education and Innovation; Correction

AGENCY: Office of Postsecondary Education, Department of  
Education.

ACTION: Correcting amendments.

SUMMARY: On September 2, 2020, the Department of Education  
(Department) published in the *Federal Register* a final rule to  
amend the general, establishing eligibility, maintaining  
eligibility, and losing eligibility sections of the  
Institutional Eligibility regulations issued under the Higher  
Education Act of 1965, as amended (HEA), related to distance  
education and innovation, as well as the Student Assistance  
General Provisions regulations issued under the HEA (Distance  
Education and Innovation Rule). This document corrects the  
text in the regulations.

DATES: This correction is effective on [INSERT DATE OF  
PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Gregory Martin at (202) 453-  
7535 or [Gregory.Martin@ed.gov](mailto:Gregory.Martin@ed.gov).

If you use a telecommunications device for the deaf (TDD)  
or a text telephone (TTY), call the Federal Relay Service (FRS),  
toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: The Department's Distance Education and Innovation Rule, published in the *Federal Register* on September 2, 2020 (85 FR 54742), contained an error in the amendatory language that resulted in the deletion of 34 CFR 600.20(f), (g), and (h). This correction restores those paragraphs.

#### Waiver of Proposed Rulemaking and Negotiated Rulemaking

In accordance with the Administrative Procedure Act, 5 U.S.C. 553, the Department generally offers interested parties the opportunity to comment on proposed regulations. However, the actions in this document merely correct a technical error, and thus, the Department has determined that publication of a proposed rule is unnecessary under 5 U.S.C. 553(b) (B).

In addition, under section 492 of the HEA (20 U.S.C. 1098a), all regulations proposed by the Department for programs authorized under title IV of the HEA are subject to negotiated rulemaking requirements. Section 492(b) (2) of the HEA provides that negotiated rulemaking may be waived for good cause when doing so would be "impracticable, unnecessary, or contrary to the public interest." There is likewise good cause to waive the negotiated rulemaking requirement in this case, since, as explained above, notice and comment rulemaking is unnecessary.

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List of Subjects in 34 CFR Part 600

Colleges and universities, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

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Michelle Asha Cooper,  
*Acting Assistant Secretary for  
Postsecondary Education.*

Accordingly, the Secretary corrects 34 CFR part 600 by making the following correcting amendment:

**PART 600 - INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION  
ACT OF 1965, AS AMENDED**

1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

2. Section 600.20 is amended by adding paragraphs (f) through (h) and a parenthetical OMB approval note to read as follows:

§600.20 Notice and application procedures for establishing, reestablishing, maintaining, or expanding institutional eligibility and certification.

\* \* \* \* \*

(f) *Disbursement rules related to applications.* (1)(i) Except as provided under paragraph (f)(1)(ii) of this section and 34 CFR 668.26, if an institution submits an application under paragraph (b)(2)(i) of this section because its participation period is scheduled to expire, after that expiration date the institution may not disburse title IV, HEA program funds to students attending that institution until the institution receives the Secretary's notification that the institution is again eligible to participate in those programs.

(ii) An institution described in paragraph (f)(1)(i) of this section may disburse title IV, HEA program funds to its

students if the institution submits to the Secretary a materially complete renewal application in accordance with the provisions of 34 CFR 668.13(b)(2), and has not received a final decision from the Department on that application.

(2)(i) Except as provided under paragraph (f)(2)(ii) of this section and 34 CFR 668.26, if a private nonprofit, private for-profit, or public institution submits an application under paragraph (b)(2)(ii) or (iii) of this section because it has undergone or will undergo a change in ownership that results in a change of control or a change in status, the institution may not disburse title IV, HEA program funds to students attending that institution after the change of ownership or status until the institution receives the Secretary's notification that the institution is eligible to participate in those programs.

(ii) An institution described in paragraph (f)(2)(i) of this section may disburse title IV, HEA program funds to its students if the Secretary issues a provisional extension of certification under paragraph (g) of this section.

(3) If an institution must apply to the Secretary under paragraphs (c)(1) through (4) of this section, the institution may not disburse title IV, HEA program funds to students attending the subject location, program, or branch until the institution receives the Secretary's notification that the location, program, or branch is eligible to participate in the title IV, HEA programs.

(4) If an institution applies to the Secretary under paragraph (c)(5) of this section to convert an eligible location to a branch campus, the institution may continue to disburse title IV, HEA program funds to students attending that eligible location.

(5) If an institution does not apply to the Secretary to obtain the Secretary's approval of a new location, program, increased level of program offering, or branch, and the location, program, or branch does not qualify as an eligible location, program, or branch of that institution under this part and 34 CFR part 668, the institution is liable for all title IV, HEA program funds it disburses to students enrolled at that location or branch or in that program.

*(g) Application for provisional extension of certification.*

(1) If a private nonprofit institution, a private for-profit institution, or a public institution participating in the title IV, HEA programs undergoes a change in ownership that results in a change of control as described in § 600.31, the Secretary may continue the institution's participation in those programs on a provisional basis, if the institution under the new ownership submits a "materially complete application" that is received by the Secretary no later than 10 business days after the day the change occurs.

(2) For purposes of this section, a private nonprofit institution, a private for-profit institution, or a public institution submits a materially complete application if it

submits a fully completed application form designated by the Secretary supported by—

(i) A copy of the institution's State license or equivalent document that--as of the day before the change in ownership--authorized or will authorize the institution to provide a program of postsecondary education in the State in which it is physically located;

(ii) A copy of the document from the institution's accrediting association that--as of the day before the change in ownership--granted or will grant the institution accreditation status, including approval of any non-degree programs it offers;

(iii) Audited financial statements of the institution's two most recently completed fiscal years that are prepared and audited in accordance with the requirements of 34 CFR 668.23; and

(iv) Audited financial statements of the institution's new owner's two most recently completed fiscal years that are prepared and audited in accordance with the requirements of 34 CFR 668.23, or equivalent information for that owner that is acceptable to the Secretary.

(h) *Terms of the extension.* (1) If the Secretary approves the institution's materially complete application, the Secretary provides the institution with a provisional Program Participation Agreement (PPA). The provisional PPA extends the terms and conditions of the program participation agreement that

were in effect for the institution before its change of ownership.

(2) The provisional PPA expires on the earlier of—

(i) The date on which the Secretary signs a new program participation agreement;

(ii) The date on which the Secretary notifies the institution that its application is denied; or

(iii) The last day of the month following the month in which the change of ownership occurred, unless the provisions of paragraph (h)(3) of this section apply.

(3) If the provisional PPA will expire under the provisions of paragraph (h)(2)(iii) of this section, the Secretary extends the provisional PPA on a month-to-month basis after the expiration date described in paragraph (h)(2)(iii) of this section if, prior to that expiration date, the institution provides the Secretary with—

(i) A "same day" balance sheet showing the financial position of the institution, as of the date of the ownership change, that is prepared in accordance with Generally Accepted Accounting Principles (GAAP) published by the Financial Accounting Standards Board and audited in accordance with Generally Accepted Government Auditing Standards (GAGAS) published by the U.S. General Accounting Office;

(ii) If not already provided, approval of the change of ownership from the State in which the institution is located by



the agency that authorizes the institution to legally provide postsecondary education in that State;

(iii) If not already provided, approval of the change of ownership from the institution's accrediting agency; and

(iv) A default management plan unless the institution is exempt from providing that plan under 34 CFR 668.14(b)(15).

(Approved by the Office of Management and Budget under control number 1845-0012)

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